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IN THE

Supreme Court of the United States

OCTOBER TERM, 1942

No. 10

MITCHELL CLIFTON ANDERSON, JOHN EDWARD SIMONDS, EARL HUBBARD, FELTON MOORE WOODWARD, MARION LUTHER ELLIS, ROBERT LEE BALLEW, JOHN DAVID QUEEN, ROBERT LEE RHODES,

Petitioners,

v.

THE UNITED STATES OF AMERICA.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

SUPPLEMENT TO BRIEF FOR PETITIONERS

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Attorney for the Petitioners.

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QUESTIONING OF PETITIONERS

Introductory Note

On behalf of the petitioners, this summary of the questioning of the petitioners who confessed is submitted pursuant to the request of Mr. Justice Black.

This summary is taken completely from the testimony of the Federal Agents. It differs from the summary of the Government in that it analyzes separately each *peti-*

tioner's questioning on the several days involved, rather than the questioning of all the petitioners arranged by the *day*. It also indicates the various questionings at which either the Sheriff or his deputies were present; these facts were not included in the Government's summary. The only material discrepancies between the Government's summary and this one are as follows:

(1) The Government states that Hubbard was questioned intermittently from 5 to 5:30 P. M. on Friday, April 26. We state the period to be from 5 to 6:30 P. M. The record supports our statement (R. 391).

(2) The Government omits entirely that Hubbard was questioned by Roche and Plaxico at 2 or 3 P. M. on Saturday, April 27 (R. 182).

(3) The Government omits to state that Plaxico questioned Simonds for one hour in the morning of Thursday, April 25, and that Mann questioned Simonds on the evening of the same day. We include those periods because of Plaxico's testimony at page 315 of the record, and Mann's testimony at pages 429 and 471 of the record, although Plaxico's testimony at page 315 of the record is inconsistent with his testimony at page 309 thereof.*

(4) The Government omits to state that Morgan and Plaxico questioned Woodward on at least two, and perhaps three, separate occasions which were not identified as to time (Morgan, R. 389; Plaxico, R. 294, 490).

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* Other examples of inconsistencies in the testimony of the Federal Agents are as follows: Roche—R. 182, compare R. 284; R. 429, compare R. 283, 787. Mann—R. 471, compare R. 326, 336. Plaxico and Roche—R. 490, compare R. 786-787. In each instance, where a question period has been indicated by an Agent, it has been included in our summary, although other testimony of the same Agent may not confirm the existence of the question period.

HUBBARD

(Arrested Wednesday, evening, April 24—R. 200)

Day	Time: Began	Lasted	Present (Includes all present at some time during the period)
Thursday, April 25	Afternoon	— 2 hours	Roche (R. 181); Plaxico (R. 296-297, 309); Sheriff Biggs (R. 309); Mann (R. 322-323, 335); Hevron (R. 345, 351).
	Evening	— 2 hours	Roche, Plaxico (R. 282-283, 788).
Friday, April 26	1:30 or 2:00 p. m.	— 45 mins.	Roche (R. 434).
	5:00 p. m.-6:30 p. m. Intermittently, at ten or fifteen minute intervals	— 1½ hrs.	Morgan, McCabe (R. 384, 391, 398).
	7:30 p. m.-9:30 p. m.	— 2 hours	Lunsford (R. 358-359, 362-363); Whitten (R. 367-368, 374-376).
Saturday, April 27	Intermittently, all day. Started in morning—finished in late afternoon.		Morgan (R. 392-394).
	Either before or after lunch	— 2 hours	McCabe (R. 497-498).
	11 a. m.	— 30 mins.	Plaxico (R. 313).
	2 or 3 p. m.	—(Not stated)	Roche, Plaxico (R. 182).
	6 p. m.	— 15 or 20 mins.	Plaxico (R. 314).
Sunday, April 28	Afternoon (Confessed after Simonds did)	— 1 hour	Roche, Plaxico (R. 285).
Tuesday, April 30	Morning (Oral confession of Sunday reduced to writing)	— 2 hours	Lunsford (R. 359-360, 364-365); Whitten (R. 367-368, 379).

SIMONDS

(Arrested Wednesday afternoon, April 24—R. 224)

Day	Time: Began	Lasted	Present (Includes all present at some time during the period)
Thursday, April 25	Morning —	1 hour	Plaxico (R. 315).
	2 p. m. —	2 hours	Roche (R. 173-174, 274, 282, 786-787); Mann (R. 326, 336, 471); Plaxico (R. 289, 309, 490).
	7 p. m. —	2 hours	Roche, Plaxico (R. 174-175, 274, 282-283, 787).
	Evening —	(Not stated)	Mann (R. 471, 429).
Friday, April 26	10 a. m. —	1 hour	Plaxico, Mann, Roche (R. 311-312).
Saturday, April 27	Afternoon —	20 mins.	Plaxico (R. 315, 490).
	Evening or Afternoon —	10, 15 or 30 mins.	Morgan (R. 387, 394).
	Afternoon —	25 or 30 mins.	Morgan, Chief Deputy Campbell (R. 387, 395).
Sunday, April 28	Afternoon — (Confessed after this hour of questioning)	1 hour	Roche (R. 176, 247-275); Plaxico (R. 289, 316).

WOODWARD

(Arrested shortly after noon on Wednesday, April 24—R. 247)

Day	Time: Began	Lasted	Present (Includes all present at some time during the period).
Thursday, April 25	Afternoon	— 2 hours	Roche (R. 187, 279, 436, 789); Mann (R. 328, 336, 467-468); Hevron (R. 348, 353); Plaxico (R. 490).
	Evening	— 2 hours	Roche (R. 436, 789).
Saturday, April 27	(Not stated)	— 15 mins.	Morgan (R. 388-389, 818).
Sunday, April 28	Afternoon (After learning that Simonds and Hubbard had confessed)	— Confessed	Plaxico, Roche, Mann (R. 297).
Monday, April 29	11 a. m. 3:30 a. m. (Questioned in order to reduce confession of Sunday to writing).	— 2 p. m. — 7:30 p. m.	Hevron (R. 348, 354-355, 499, 500); McCabe (R. 497, 498); Mann (R. 328, 329, 341, 445, 470, 476, 477, 820).
Days Unknown	(Not stated)	— A little more than 15 minutes	Morgan (R. 389).
	(Not stated)	— Once or twice for not more than half hour at a time	Plaxico (R. 294, 490).

RHODES
(Arrested Sunday evening, April 28—R. 733-734)

Day	Time: Began	Lasted	Present (Includes all present at some time during the period)
Monday; April 29	(Not stated)–(Not stated) (Confession after this period was taken down in writing)		Lunsford, Whitten (R. 524, 534, 801)

BALLEW
(Arrested Tuesday afternoon, April 30—R. 746)

Day	Time: Began	Lasted	Present (Includes all present at some time during the period)
Tuesday, April 30	Afternoon	— 1 hour	Whitten, Lunsford (R. 537, 538).
Wednesday, May 1	(Not stated) (Confession after this period was taken down in writing. Ballew had been taken from Copperhill to Chattanooga, where he confessed—R. 537, 803)	— 5 mins.	Lunsford (R. 803); Whitten (R. 812-813).

QUEEN
(Arrested Sunday afternoon, April 28—R. 681-682)

Day	Time: Began	Lasted	Present (Includes all present at some time during the period)
Monday, April 29	9 p.m. (Signed confession after this hour of questioning)	— 1 hour	Mann, McCabe and Hevron (R. 522).